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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,960	02/20/2004	Steven Rehkemper	4004013.0096	4428

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EXAMINER

CHIN, RANDALL E

ART UNIT PAPER NUMBER

1744

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,960

Applicant(s)

REHKEMPER, STEVEN

Examiner

Randall Chin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 7, 11 and 12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

2. The disclosure is objected to because of the following informalities:

On p. 4, line 4, "an substantially" should read --a substantially--.

Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 and 10-14 of copending Application No. 10/795,752 in view of Ernest et al. 4,598,437 (hereinafter Ernest).

Claims 1-12 of the instant application are identical to claims 1-7 and 10-14 of copending Application No. 10/795,752 with the exception of the instant claims reciting a "toothbrush" or "folding toothbrush" instead of a "razor" or a "folding razor" and there being "bristles" instead of a "blade head." The patent Ernest teaches the concept of providing for a common handle which could be used either with a toothbrush head (col. 5, line 37 to col. 6, line 21; Figs. 3A, 3B, 4) or a razor head 116 (col. 7, lines 26-38; Figs. 9A and 9B). It would have been obvious to one of ordinary skill in the art to have modified the invention as defined by claims 1-7 and 10-14 of copending Application No. 10/795,752 (i.e., razor or folding razor) such that the head is instead a toothbrush as suggested by Ernest since Ernest teaches either a razor head or a toothbrush head could be used in conjunction with the disclosed handle. Further, novelty really lies in the

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“folding” configuration and one of ordinary skill in the art knows that any known personal or toiletry item can be provided as the head for a hygienic travel item.

This is a provisional obviousness-type double patenting rejection.

Claim Objections

5. Claim 9 and 11 are objected to because of the following informalities:

Claim 9, line 1, “wherein the a means” should be corrected.

Claim 11, line 2, “the movably junction” lacks proper antecedent basis. Further, the recitation “about the movably junction” is awkwardly written.

Claim 11, line 3, the recitation that the detent is fixed on the **arm** makes the description only recites that the detents 134 are on the **handle section 102**, and not on the arm section 104 (paragraph [0017]; see Fig. 3). Clarification is respectfully requested.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hafliger et al. US 2002/0124333 (hereinafter Hafliger).

With respect to claim 1, Hafliger discloses a “folding” toothbrush in Figs. 2 and 3 comprising a handle 1, a housing or arm 12 movably joined to said handle (through the elastically compliant neck part zones 7; paragraph 0014]) and having bristles 6 disposed at one end thereof, a power supply 25 contained within the handle, and a mechanical means 11, 15 (paragraph [0021]) contained within the arm and operated by said power supply to create movement of the bristles when said mechanical means is activated.

As for claim 2, the power supply 25 includes a first electrical contact 30 and the mechanical means includes a second electrical contact (through electric lines 33, 34; paragraph [0020]) and when the toothbrush is in an “unfolded position”, the first electrical contact makes an electrical connection with the second electrical contact to power the mechanical means. It should be noted that claim 1 or claim 2 never specifically recites the extent to which the terms “folding toothbrush” (claim 1) or “unfolded position” (claim 2) define “folding.” It is the Examiner’s position that to the extent that Hafliger’s brush is not being bent at the elastically compliant zones 7, that the toothbrush is deemed to be in an “unfolded position.”

As for claim 8, Hafliger teaches a toothbrush in Figs. 2 and 3 comprising a handle 1 and a power supply 25 contained therein, a housing or arm 12 movably joined to said handle (through the elastically compliant neck part zones 7; paragraph 0014]) and having bristles 6 disposed at one end thereof, a motor mechanism 15 contained within the arm and operable to move said bristles when activated (paragraph [0021]), and a means for supplying power (electric power lines 31, 33, 34; paragraph [0024]) to

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the motor mechanism when the toothbrush is in "an outstretched position." It should be noted that claim 8 never specifically positively recites that the toothbrush "folds", "stretches", etc. and it is the Examiner's position that to the extent that Hafliger's brush is not being bent at the elastically compliant zones 7, that the toothbrush is deemed to be in an "outstretched position."

As for claim 9, the means for supplying power to the motor mechanism when the toothbrush is in an outstretched position includes a first electrical contact at 30 in communication with the power supply and positioned in the handle, and a second electrical contact (through lines 33, 34; paragraph [0020]) in communication with the motor mechanism and positioned in the arm such that when the arm and the handle are in the "outstretched position," the first and second electrical contacts make an electrical connection whereby power from the power supply is able to operate the motor mechanism.

As for claim 10, there is a vibratory element 11 defining a weight attached to an axle 15a that is rotated by the motor mechanism, the weight is positioned on the axle in proximity to the bristles such that when the axle is rotated, the spinning weight 11 causes the arm to oscillate such that the bristles vibrate (paragraph [0021]).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parker et al. 6,481,104 (hereinafter Parker) in view of Ernest.

Parker discloses a folding razor (200 figure 3) comprising a handle (210 figure 3) an arm (230 figure 3) movably joined to said handle (by pivot 280 or in another embodiment pivot 290 figure 3) with a blade head disposed at one end thereof (50 figure 3). Parker further discloses a power supply (b1 figure 3) contained within the handle and a mechanical means, specifically a motor operable to move said blade head (100, 110, 120, figure 3) within the arm and operated by said power supply to create movement (column 5, lines 45-65), while the razor is in an outstretched position. Parker discloses all of the recited subject matter with the exception of a "toothbrush" or and there being "bristles" instead of a "blade head." The patent Ernest teaches the concept of providing for a common handle which could be used either with a toothbrush head (col. 5, line 37 to col. 6, line 21; Figs. 3A, 3B, 4) or a razor head 116 (col. 7, lines 26-38; Figs. 9A and 9B). It would have been obvious to one of ordinary skill in the art to have modified Parker's head such that the head is instead a toothbrush with bristles as suggested by Ernest since Ernest teaches either a razor head or a toothbrush head could be used in conjunction with the disclosed handle. Further, the inventive feature really lies in the "folding" configuration and any known personal or toiletry item could be substituted as the head for a hygienic travel item.

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10. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker in view of Ernest, as applied to claim 1 above, and further in view of Holahan et al. 4,364,104 (hereinafter Holahan).

Regarding claim 2, Parker discloses all the elements of the claimed invention, except for the limitation that the contacts be disposed such that when open the power is necessarily on, and when closed the power is necessarily off. Parker teaches that the power can be on or off when the razor is in an "unfolded" position. Holahan teaches an electrical switch with first (52 figure 5) and second contacts (48 figure 3), disposed such that when the arm is unfolded from the handle (figure 1 transition to figure 2), an electrical connection would be made (column 1, lines 19-21). In the same field of problem solving it would have been obvious to one skilled in the art at the time of the invention to modify Parker by replacing the switch and pivot with a combined switch-pivot as taught by Holahan, since doing so makes the device easier to turn on. The motivation to combine is given in Zirk et al. (USPN 7,008,076) which teaches a pivot switch that turns on power for a light when a blade is opened. The motivation is that having the on-by-opening function allows a user to switch the electricity on "without ever having to touch a switch", column 5, lines 35-36, and further teaches the on-by-opening function can be used with razors (column 5 line 40).

Regarding claim 3, Parker et al discloses all the elements of the claimed invention, except for the limitation that the contacts be disposed such that when the arm is moved to a closed position, the electrical connection be broken.

Holahan further teaches that when the arm moves the switch-pivot into a closed

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position, the electrical connection is broken (column 2 line 65, column 3 line 1).

In the same field of problem solving it would have been obvious to one skilled in the art at the time of the invention to modify Parker by replacing the switch and pivot with a combined switch-pivot as taught by Holahan, since doing so makes the device easier to turn off.

Regarding claim 4, Parker further discloses that movement of the blade head is caused by a motor (100 figure 3) with an offset weight (120 figure 3) being spun about an axle (seen connecting 100 to 120 figure 3) rotated by said motor.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parker in view of Ernest, as applied to claim 1 above, and further in view of Yaw 5,465,488 (hereinafter Yaw).

Parker discloses every element of the claimed invention except that said blade head be pivotally connected to the arm such that the blade head may be aligned with the arm and that said handle includes a cavity for receiving said arm and said blade when said blade is pivoted and when said razor is in a folded position. Yaw teaches a folding razor having a blade head (44 figure 1) being pivotally connected (see figure 2) to the arm (the top extent of 41 figure 1) such that the blade head may be aligned with the arm (see figure 2) and that said handle includes a cavity (see below) for receiving said arm and said blade when said blade is pivoted and when said razor is in a folded position (as shown in figure 3). In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Parker et al. by making the

razor head pivotable and containable within said handle as taught by Yew, since this provides a more sanitary razor. The motivation to combine is that storing the razor head within the handle keeps dirt and other debris off the razor blades (column 1, lines 30-38).

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parker in view of Ernest and Holahan, as applied to claims 1 and 2 above, and further in view of Lin 5,206,994 (hereinafter Lin).

The modified Parker device discloses every element of the claimed invention except for the limitation that there be a means to maintain the razor in an unfolded position. Lin discloses a folding razor with means to bias (maintain) the arm in an unfolded position, relative to the handle portion (column 2, lines 50-60, 40 figure 1). In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Parker et al. by replacing the pivot with a pivot and spring as taught by Lin, so that the razor arm would stay in an unfolded position. The motivation to combine is that making the pivot as Lin did provides for the razor to remain open and useable.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The reference to Heavenor is pertinent to a handle which can be used with a toothbrush head or a razor head.

Allowable Subject Matter

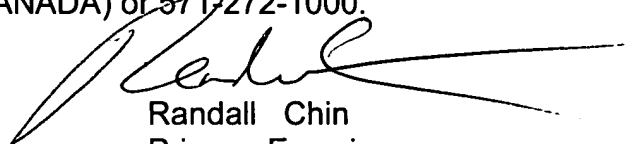
14. Claims 7, 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Randall Chin', with a long horizontal stroke extending to the right.

Randall Chin
Primary Examiner
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